

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN THE MATTER OF:

DAVID PIERCE,
NANCY PIERCE,

Debtor(s)

Case No: B-1180296 C-13D

OBJECTION BY STANDING TRUSTEE TO CONFIRMATION OF PLAN

NOW COMES Richard M. Hutson, II, Standing Trustee ("Trustee") and respectfully objects to confirmation of the Debtors' plan pursuant to 11 U.S.C. §1325 and shows unto the Court the following:

1. The Debtors filed a petition under Title 11 of the United States Code, Chapter 13, on February 17, 2011, in the United States Bankruptcy Court for the Middle District of North Carolina.
2. On February 17, 2011, Richard M. Hutson, II, was appointed as Trustee.
3. This Court has proper and personal jurisdiction of the subject matter hereof and over the parties pursuant to 28 U.S.C. §§151, 157 and 1334, and the Local Rule 83.11 entered by the United States District Court for the Middle District of North Carolina and this is a core proceeding within 28 U.S.C. §157(b).
4. The original plan filed by the Debtors proposed a monthly payment of \$2,882.00 for a period of 60 months. Upon the objection of the Trustee, an order was entered June 24, 2011 denying confirmation of the original plan and providing the Debtors with 30 days within which to file an amended plan.
5. The Debtors have filed an amended plan proposing payments of \$2,460.00 per month for a period of 60 months. No dividend is provided to unsecured creditors.
6. PNC Mortgage ("PNC") has filed a claim in the amount of \$228,002.88 secured by the Debtors' real property at 3503 Shady Creek, Durham, NC ("the real property"). The claim asserts ongoing monthly mortgage payments of \$1,542.86 and an arrearage through July of 2011 in the amount of \$23,815.09. The Debtors' plan proposes to pay the claim of PNC as a long-term debt through the Trustee's office and the arrearage as a secured claim.

7. First American Capital ("FAC") has filed a claim in the amount of \$82,870.50 secured by the real property. The claim asserts ongoing monthly mortgage payments of \$927.23 and an arrearage through July of 2011 in the amount of \$10,826.76. The Debtors' plan proposes to pay the claim of FAC as a long-term debt through the Trustee's office and the arrearage as a secured claim.
8. The Debtors' plan provides that the claim of BCBSNC Credit Union ("the Credit Union") secured by the Debtors' 2005 Chrysler automobile ("the automobile") shall be paid as secured in the amount of \$4,623.34 with interest at the rate of 5.25% per annum in monthly installments of \$89.00.
9. The Trustee objects to confirmation of the plan in that the Debtors' proposed plan payments are not sufficient to satisfy the long-term debts of PNC and FAC, the arrearage claims of PNC and FAC, the secured debt payments to the Credit Union, and all other secured and priority claims within the 60 month time limitation of 11 U.S.C. §1322(d).

WHEREFORE, the Trustee prays the Court for an Order as follows:

1. That the Debtors' plan not be confirmed in that the plan does not comply with 11 U.S.C. §1325 and the case be dismissed for cause pursuant to 11 U.S.C. §1307;
2. That, in the alternative, the Debtors' plan payments be increased to \$3,465.00 per month for 60 months; or
3. For such other and further relief as the Court may deem just or proper.

This the 15th day of August, 2011.

/s/ Benjamin E. Lovell
Benjamin E. Lovell
Attorney for the Trustee
State Bar No: 23266
P.O. Box 3613
Durham, N.C. 27702

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon John T. Orcutt, Esq., 6616-203 Six Forks Rd., Raleigh, NC 27615, David & Nancy Pierce, 3503 Shady Creek Dr., Durham, NC 27713, and Michael D. West, Esq., U.S. Bankruptcy Administrator, PO Box 1828, Greensboro, NC 27402 by depositing a copy of same in the United States Mail, postage prepaid, and in the manner prescribed by Rule 5 of the Federal Rules of Civil Procedure.

This 15th day of August, 2011.

s/Benjamin E. Lovell
Benjamin E. Lovell, Esq.
Attorney for the Standing Trustee